Supreme Court, U.S
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No. 14-144

In the Supreme Court of the United States

JOHN WALKER III, IN HIS OFFICIAL CAPACITY AS CHAIRMAN OF THE BOARD, ET AL., PETITIONERS

v.

TEXAS DIVISION, SONS OF CONFEDERATE VETERANS, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JOINT APPENDIX

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Petition for writ of certiorari filed August 7, 2014
Certiorari granted December 5, 2014

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U.S. District Court [LIVE]
Western District of Texas (Austin)
CIVIL DOCKET FOR CASE #: 1:11-cv-01049-SS

Texas Division, Sons of Confederate Veterans, Inc. et al v. Victor T. Vandergriff et al
Assigned to: Judge Sam Sparks
Case in other court: 5th USCA, 13-50411
Cause: 42:1983 Civil Rights Act

Filing Date	#	Docket Text
12/8/2011	1	COMPLAINT * * * filed by Ray W James, Granvel J. Block, Texas Division, Sons of Confederate Veterans * * *
1/6/2012	7	MOTION to Dismiss by Clifford Butler, Blake Ingram, Cheryl Johnson, Raymond Palacios, Jr., Victor Rodriguez, Marvin Rush, Laura Ryan, Texas Department of Motor Vehicles Board, Victor T. Vandergriff, John Walker III. * * *
1/17/2012	10	AMENDED COMPLAINT * * * filed by Ray W James, Granvel J. Block, Texas Division, Sons of Confederate Veterans, Inc. * * *
1/17/2012	11	Response in Opposition to * * * MOTION to Dismiss * * *
1/30/2012	23	MOTION to Dismiss *Plaintiffs' First Amended Complaint* by Clifford Butler, Blake Ingram, Cheryl Johnson, Raymond Palacios,

		Jr., Victor Rodriguez, Marvin Rush, Laura Ryan, Victor T. Vandergriff, John Walker III. * * *
2/10/2012	25	Response in Opposition to * * * MOTION to Dismiss *Plaintiffs' First Amended Complaint* * * *
3/7/2012	27	ORDER DISMISSING AS MOOT [7] Motion to Dismiss ; DENYING [23] Motion to Dismiss. Signed by Judge Sam Sparks. * * *
3/21/2012	29	ANSWER to [10] Amended Complaint by Clifford Butler, Blake Ingram, Cheryl Johnson, Raymond Palacios, Jr., Victor Rodriguez, Marvin Rush, Laura Ryan, Victor T. Vandergriff, John Walker III. * * *
10/31/2012	35	MOTION for Summary Judgment *and, in the Alternative, for Preliminary Injunction* by Granvel J. Block, Ray W James, Texas Division, Sons of Confederate Veterans, Inc.. (Attachments: # (1) Appendix Appendix, # (2) Exhibit Exhibit 1, # (3) Exhibit Ex A, # (4) Exhibit Ex B, # (5) Exhibit Ex C, # (6) Exhibit Ex D, # (7) Exhibit Ex E, # (8) Exhibit Ex F, # (9) Exhibit Ex G, # (10) Exhibit Ex H, # (11) Exhibit Ex I, # (12) Exhibit Ex J,

		# (13) Exhibit Ex K, # (14) Exhibit Ex L) * * *
11/1/2012	37	MOTION for Summary Judgment by Clifford Butler, Blake Ingram, Raymond Palacios, Jr., Victor Rodriguez, Marvin Rush, Laura Ryan, Victor T. Vandergriff, John Walker III. (Attachments: # (1) Proposed Order, # (2) Appendix Exhibits 1 to 4, # (3) Appendix Exhibit 5, # (4) Appendix Exhibits 6 to 8) * * *
11/13/2012	38	Response in Opposition to * * * MOTION for Summary Judgment *and, in the Alternative, for Preliminary Injunction* filed by Plaintiff Ray W James, Plaintiff Granvel J. Block, Plaintiff Texas Division, Sons of Confederate Veterans, Inc. * * *
11/15/2012	39	Response in Opposition to * * * MOTION for Summary Judgment filed by Defendant Victor Rodriguez, Defendant Clifford Butler, Defendant Marvin Rush, Defendant Laura Ryan, Defendant John Walker III, Defendant Blake Ingram, Defendant Raymond Palacios, Jr., Defendant Victor T. Vandergriff * * *

2/8/2013	42	ORDER re * * * Status Conference. IT IS ORDERED that both sides shall have until February 14, 2013, to file any supplements to their pending motions for summary judgment. Signed by Judge Sam Sparks. * * *
2/14/2013	43	REPLY to Response to * * * MOTION for Summary Judgment filed by Defendant Victor Rodriguez, Defendant Clifford Butler, Defendant Marvin Rush, Defendant Laura Ryan, Defendant John Walker III, Defendant Blake Ingram, Defendant Raymond Palacios, Jr., Defendant Victor T. Vandergriff * * *
4/12/2013	44	ORDER DENYING [35] Motion for Summary Judgment *by Plaintiffs*; GRANTING [37] Motion for Summary Judgment *by Defendants*. Signed by Judge Sam Sparks. * * *
4/12/2013	45	JUDGMENT. Signed by Judge Sam Sparks. * * *
4/30/2013	46	Appeal of Final Judgment [44], [45] by Granvel J. Block, Ray W James, Texas Division, Sons of Confederate Veterans, Inc. * * *
4/30/2013		NOTICE OF APPEAL following [46] Notice of Appeal (E-Filed) by

		Granvel J. Block, Ray W James, Texas Division, Sons of Confederate Veterans, Inc. * * *
5/2/2013	47	AMENDED JUDGMENT. Signed by Judge Sam Sparks. * * *
5/2/2013	48	Amended Appeal of Final Judgment [44], [47] by Granvel J. Block, Ray W James, Texas Division, Sons of Confederate Veterans, Inc. * * *
5/2/2013		Amended NOTICE OF APPEAL following [48] * * * by Granvel J. Block, Ray W James, Texas Division, Sons of Confederate Veterans, Inc. * * *
5/10/2013	49	TRANSCRIPT REQUEST by Granvel J. Block, Ray W James, Texas Division, Sons of Confederate Veterans, Inc.: No transcripts needed. * * *

General Docket
United States Court of Appeals
for the 5th Circuit

TEXAS DIVISION, SONS OF CONFEDERATE VETERANS, INCORPORATED, a Texas Corporation; GRANVEL J. BLOCK, Individually; RAY W. JAMES, Individually,

Plaintiffs - Appellants

v.

VICTOR T. VANDERGRIFF, In His Official Capacity as Chairman of the Board; CLIFFORD BUTLER, In His Official Capacity as a Member of the Board; RAYMOND PALACIOS, JR., In His Official Capacity as a Member of the Board; LAURA RYAN, In Her Official Capacity as a Member of the Board; VICTOR RODRIGUEZ, In His Official Capacity as a Member of the Board; MARVIN RUSH, in his official capacity as a Member of the Board; JOHN WALKER, III, In His Official Capacity as a Member of the Board; BLAKE INGRAM, In His Official Capacity as a Member of the Board,

Defendants - Appellees

Date	Text
05/03/2013	CIVIL RIGHTS CASE docketed. * * *
05/03/2013	CASE CAPTION updated. Additional appeal filed. * * *

07/01/2013	APPELLANT'S BRIEF FILED * * *
07/31/2013	APPELLEE'S BRIEF FILED * * *
08/14/2013	APPELLANT'S REPLY BRIEF FILED * * *
11/06/2013	ORAL ARGUMENT HEARD before Judges Smith, Prado, Elrod. Arguing Person Information Updated for: John Robert McConnell arguing for Appellant Granvel J. Block, Appellant Ray W. James; Arguing Person Information Updated for: Jonathan F. Mitchell arguing for Appellee Clifford Butler, Appellee Blake Ingram, Appellee Raymond Palacios Jr., Appellee Victor Rodriguez, Appellee Marvin Rush, Appellee Laura Ryan, Appellee Victor T. Vandergriff * * *
07/14/2014	PUBLISHED OPINION FILED. [13-50411 Reversed and Remanded] Judge: JES , Judge: ECP , Judge: JWE * * *
07/14/2014	JUDGMENT ENTERED AND FILED. * * *
08/01/2014	MOTION filed by Appellees Mr. Clifford Butler, Mr. Blake Ingram, Mr. Raymond Palacios, Jr., Mr. Victor Rodriguez, Mr. Marvin Rush,

	Ms. Laura Ryan, Mr. Victor T. Vandergriff and Mr. John Walker, III to stay issuance of the mandate * * *
08/04/2014	RESPONSE/OPPOSITION filed by Mr. Granvel J. Block, Mr. Ray W. James and Texas Division, Sons of Confederate Veterans, Incorporated [7697377-1] to the motion to stay issuance of the mandate * * *
08/06/2014	COURT ORDER - appellees' motion for stay of the mandate pending petition for writ of certiorari is DENIED. * * *
08/06/2014	MANDATE ISSUED. * * *
08/12/2014	SUPREME COURT NOTICE that petition for writ of certiorari [7703874-2] was filed by Appellees Mr. Clifford Butler, Mr. Blake Ingram, Mr. Raymond Palacios, Jr., Mr. Victor Rodriguez, Mr. Marvin Rush, Ms. Laura Ryan, Mr. Victor T. Vandergriff and Mr. John Walker, III on 08/07/2014. * * *

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TEXAS DIVISION, SONS OF CONFEDERATE VETERANS, INC.; a Texas Corporation, GRANVEL J. BLOCK, individually, and RAY W. JAMES, individually Plaintiffs,	§	
v.	§	CIVIL CASE NO. 1:11-cv-01049
VICTOR T. VANDERGRIFF. in his official capacity as Chairman of the Motor Vehicle Board, CLIFFORD BUTLER, in his official capacity as a Member of the Board, RAYMOND PALACIOS, JR., in his official capacity as a Member of the Board, BLAKE INGRAM, in his official capacity as a Member of the Board, CHERYL JOHNSON, in her official capacity as a Member of the Board, LAURA RYAN, in her official capacity as a Member of the Board, VICTOR RODRIGUEZ, in his official capacity as a Member of the Board, MARVIN RUSH, in his official capacity as a Member of	§	

the Board, and JOHN	§
WALKER III, in his official	§
capacity as a Member of the	§
Board	§
Defendants.	§

PLAINTIFFS' FIRST AMENDED COMPLAINT

NOW COME Plaintiffs Texas Division, Sons of Confederate Veterans, Inc. ("Texas SCV"), Granvel J. Block, and Ray W. James complaining of the Texas Department of Motor Vehicles Board executive director and Board members, Victor T. Vandergriff, Clifford Butler, Raymond Palacios, Jr., Blake Ingram, Laura Ryan, Victor Rodriguez, Marvin Rush, and John Walker III, acting in their official capacity, and for cause of action would respectfully show this Court as follows:

I. Nature of the Action

1.1 This action is filed pursuant to 42 U.S.C. §1983 to vindicate the rights secured to the Texas SCV by the First and Fourteenth Amendments to the Constitution.

1.2 The Texas SCV is a non-profit organization that works diligently to preserve the memory and reputation of the Confederate soldiers, emphasizing the virtues of their fight for the preservation of liberty and freedom. The organization, through its local camps, provides a service to communities through preservation of monuments, flags, and other historical materials, as well as through educational activities and other civic activities. Like many other non-profit organizations in Texas, the Texas SCV sought from the State of Texas, through the Department Motor Vehicles Board, approval

of a specialty license plate, both to raise awareness of their endeavors and to raise additional money to fund their activities.

1.3 Defendants are members of the Texas Department of Motor Vehicles Board who were involved with the decision to reject the Texas SCV's application for a specialty plate on the basis that it is "offensive to any member of the public," thus abridging the organization's rights to freedom of speech under the Constitution.

1.4 Accordingly, the Texas SCV seeks appropriate injunctive relief, in the form of a preliminary injunction and, after trial, a mandatory permanent injunction, enjoining the Defendants to approve the Texas SCV's application for a specialty plate and implementing such a plate.

II. Parties

2.1 Plaintiff Sons of Confederate Veterans, Texas Division, Inc. is a Texas non-profit corporation. The members of SCV are descendants of those soldiers who fought in the armed forces of the Confederate States of America during the American Civil War.

2.2 Plaintiff Granvel J. Block is an individual who resides in Orange, Texas and is the Commander of the Texas Division of the Sons of Confederate Veterans.

2.3 Plaintiff Ray W. James is an individual who resides in College Station, Texas, and is the Past Commander of the Texas Division of the Sons of Confederate Veterans.

2.4 Defendant Victor T. Vandergriff is the current Chairman of the Board. Mr. Vandergriff is being sued

herein solely in his official capacity as the Chairman of the Board, and has been served and appeared.

2.5 Defendant Clifford Butler is a member of the Board. Mr. Butler is being sued herein solely in his official capacity as a member of the Board, , and has been served and appeared..

2.6 Defendant Raymond Palacios, Jr. is a member of the Board. Mr. Palacios is being sued herein solely in his official capacity as a member of the Board, and has been served and appeared.

2.7 Defendant Blake Ingram is a member of the Board. Mr. Ingram is being sued herein solely in his official capacity as a member of the Board, and has been served and appeared.

2.8 Defendant Laura Ryan is a member of the Board. Ms. Ryan is being sued herein solely in her official capacity as a member of the Board, and has been served and appeared.

2.9 Defendant Victor Rodriguez is a member of the Board. Mr. Rodriguez is being sued herein solely in his official capacity as a member of the Board, and has been served and appeared.

2.10 Defendant Marvin Rush is a member of the Board. Mr. Rush is being sued herein solely in his official capacity as a member of the Board and has been served and appeared.

2.11 Defendant John Walker III is a member of the Board. Mr. Walker is being sued herein solely in his official capacity as a member of the Board, and has been served and appeared.

III. Venue and Jurisdiction

3.1 Venue is proper in this Court pursuant to 28 U.S.C. §1391(b)(2), as a substantial part of the events or ommissions giving rise to the claim occurred in such judicial district. Additionally, venue is proper in this Court pursuant to 28.U.S.C. §1391(b)(1), where all Defendants reside. The residence of the Defendants, as public officials sued for their official acts and where they performed the acts at issue, is such judicial district.

3.2 The court has original jurisdiction over this matter pursuant to 28 U.S.C. §1331, as SCV's claims arise under the Constitution of the United States, specifically the First Amendment and the Fourteenth Amendment applying it to the states.

IV. Facts

A. General Background of the Organization and its Seal

4.1 Texas SCV is a division of a national organization, the Sons of Confederate Veterans ("SCV"), which is the oldest hereditary organization for male descendants of Confederate soldiers and was originally organized at Richmond, Virginia in 1896. The membership consists of descendants of Confederate veterans, including African-American members and Hispanic members, whose ancestors fought for the Confederacy.

4.2 The mission of the organization is "to defend the Confederate soldier's good name, be the guardian of his history, perpetuate the principles that he defended, and see that the true history of the South is presented to

future generations."[1] In doing so, the organization raises and donates money for the conservation and preservation of Confederate flags and records; identifies, preserves and marks the graves of Confederate veterans; preserves memorials to veterans and Confederate units; supports museums; preserves battlefields threatened by development; and educates children and adults about the life of the Confederate soldier.

4.3 The SCV serves as a historical, patriotic, and non-political organization dedicated to insuring that the history of the period from 1861-1865 is preserved. The SCV's constitution expressly provides that the "SCV shall be strictly patriotic, historical, educational, benevolent, non-political, non-racial and non-sectarian."

4.4 The structure of the national SCV is divided into states, and further into local "camps." The SCV has programs at the local, state, and national levels which offer a variety of activities: preservation work, marking Confederate soldier's graves, historical re-enactments, scholarly publications, and regular meetings to discuss the military and political history of the Civil War.

4.5 There are local camps of the SCV in thirty-seven states as well as in England, Scotland, Australia, Brazil, and Europe, reflecting the descendants of Confederate veterans who were both American-born and foreign-born soldiers.

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[1] Dr. Buddy Patterson, *A Brief History of the Sons of Confederate Veterans*, http://www.texasscv.org/scvHistory.php (quoting speech by Lt. Gen. Stephen D. Lee of the Confederate States Army addressing the Sons of Confederate Veterans in 1906).

4.6 The SCV is strongly protective of preserving the memory and reputation of the Confederate soldiers, including the motives for their sacrifice, emphasizing the virtues of their fight for the preservation of liberty and freedom.

4.7 Texas SCV camps participate in a varity of civic activities, such as the state Adopt-a-Highway Program, and the preservation, recognition, and creation of Confederate veteran monuments both at the county level and the state level.

4.8 The seal of the SCV contains the Battle Flag of the Confederate States of America, orginally from the Battle Flag of the Army of Northern Virginia, designed under General P.G.T. Beauregard in order to avoid confusion on the battlefield due to the striking similarities between the first national flag of the Confederacy and the flag of the Union.

4.9 The flag is square, rather than an oblong rectangle, covered by a blue saltire[2] with a thirteen white five-pointed stars to represent the states of the Confederacy.

4.10 Although this flag was not the national Confederate flag, it was the battle flag under which Confederate soldiers, including Texas soldiers, fought in multiple battles.

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[2] In fact, as discussed in The Confederate Battle Flag: America's Most Embattled Emblem by John M. Coski, one of the reasons for the use of the saltire, or St. Andrew's Cross, rather than an upright cross was that the designer, William Porcher Miles, the former chair of the Committee on the Flag and Seal, had received comments made by Southern Jews and Protestants about the overtly religious nature of the upright cross.

4.11 This battle flag was initially adopted by SCV's predecessor, the United Confederate Veterans, thus is also representative as a "soldier's flag."

4.12 As reflected in early issues of the SCV periodical *The Confederate Veteran*, the seal of the national organization, containing the square soldier's flag, has been in use by the organization since at least 1924.[3]

B. Specialty License Plates for Organizations

4.13 The State of Texas has in recent years developed a variety of ways to personalize license plates as a source of revenue for the State. These include "specialty plates" available to Texas drivers for an additional fee that specifically benefit charity and non-profit organizations.

4.14 There are a variety of these specialty plates currently available to Texas drivers, and including a wide variety of charitable and non-profit organizations, including "Ducks Unlimited", "Fight Terrorism", "Knights of Columbus", "Boy Scouts of America" and "Choose Life." Most of these plates bear the seal of that organization and a motto or the organization name.

4.15 The specialty license plates generally cost the driver $30 more than the normal registration fees annually, with $22 of that amount going to a state agency.

4.16 Often the state's portion of the money goes to a state agency related to the purpose of a given organization. Money from the Ducks Unlimited specialty plate "goes

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[3] In 2002, United States Patent and Trademark office approved this seal as a trademarked corporate logo for the organization. The SCV sought to trademark this seal in order to assure that the seal would only be used with SCV approval.

to the Texas Parks and Wildlife Department to support Texas Ducks Unlimited efforts to conserve and restore wetlands and associated habitats for wildlife and provide societal benefits such as clean water, flood control, and groundwater recharge."[4]

4.17 In 2010 alone, the State of Texas has received approximately $16 million in specialty plate sales. The program has generated approximately $131 million through fiscal 2010 since its inception in the mid-1990s.

4.18 This program is not only lucrative for the state, but is also a useful money-making activity for charities and non-profit organizations. The top sellers in 2010 made hundreds of thousands of dollars for their organization: the "Animal Friendly" plate made $518,832, shared with animal-welfare groups across the state, the "State of the Arts" plate, for statewide arts programs, made $485,302, and the "Keep Texas Wild" plate for state wildlife conservation made $388,279.

4.19 Currently, the SCV has specialty automobile license plates available to vehicle drivers in Georgia, North Carolina, Alabama, Maryland, Mississippi, Louisiana, South Carolina, Tennessee, and Virginia.

C. Texas SCV Submits its Initial Application for a License

4.20 Texas SCV initially applied for a specialty license plate in Texas with the Department of Transportation, the proper agency at the time, in August 2009.

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[4] Available at: https://rts. texasonl ine.state. tx. us/NASApp/txdotrts/SpecialPlateOrderServ let?grpid=60&pltid=79

4.21 Particularly at the time the Texas SCV initially applied, they were interested in having a specialty plate in advance of the Civil War Sesquiscentennial, April 12, 2011. Having a plate before that event would allow for the organization to acquire additional funds prior the Sesquicentennial, providing for the organization to have the monetary means for additional events. Further, having a specialty plate at the time of the Sesquicentennial would have allowed for additonal plate sales with members and non-members interested in commemorating the historic events.

4.22 The Texas SCV properly submitted its application form for a plate, and included that the nominating state agency was the Texas General Land Office, and the nominating officer was Commissioner Jerry Patterson, who is also a member of the Texas SCV.

4.23 In its application, the Texas SCV noted that it intended to use the funds from the plate to "[s]upport the General Land Office's preservation of historical documents important to Texas; support the Texas Historical Commission's placement of monuments to Texas units across the South; and generally assist in carrying out our mission."

4.24 On December 21, 2009, the Texas SCV received a letter from Rebecca Davio, Director of the Vehicle Titles and Registration Division, denying the Texas SCV's application for a specialty license plate.

4.25 Following this denial, the Texas SCV made an open records request of the Department of Transportation.

4.26 From documents provided in response to this, the Texas SCV learned that the application had initially passed, based upon a simple majority of a quorum of the committee members on October 30, 2009. Initially five of the seven members voted, with a three to two vote in favor of approving the plate. This vote stood for over a month.

4.27 However, as emails among the committee members demonstrate, upon Ms. Davio's insistance that there be a re-vote based upon the "controversial" nature of the plate, the plate was denied as part of a 4 to 1 vote. This re-vote took place on December 10, 2009.

4.28 There appears to be no procedural basis for the committee ignoring the initial quorum vote.

4.29 Prior to the re-vote, on December 4, 2009, Ms. Davio sent an email to the Chairman of the newly-formed Department of Motor Vehicles Board, Mr. Vandergriff, explaining that they had received an application from the Texas SCV and were planning to re-vote, and further noted a lawsuit in Florida regarding a similar plate.

4.30 In 2009, the Texas Legislature amended the Transportation Code to provide that the Department of Motor Vehicles, rather than the Department of Transportation, was charged with issuing specialty license plates. The license plate function moved to the new Department of Motor Vehicles on November 1, 2009.

4.31 Further, the Legislature created a Department of Motor Vehicles Board and established some guidelines

for the specialty plates. *See* Acts 2009, 81st Leg., ch. 933, § 2G.01, eff. Sept. 1, 2009.

4.32 Specifically, under Section 504.801(c) of the Transportation Code:

> The department shall design each new specialty license plate in consultation with the sponsor, if any, that applied for creation of that specialty license plate. **The department may refuse to create a new specialty license plate if the design might be offensive to any member of the public,** if the nominated state agency does not consent to receipt of the funds derived from issuance of the license plate, if the uses identified for those funds might violate a statute or constitutional provision, or for any other reason established by rule. At the request of the sponsor, distribution of the license plate may be limited by the department. (emphasis added)

4.33 Since the Board has been charged with issuing specialty license plates, it has approved 89 of the specialty plates -- and rejected none. The Sons of the Confederate Veterans plate is the first, and only, to be rejected.

4.34 In October 27, 2010, the Texas SCV sought a reversal of the denial of their application from the Board.

4.35 The Board agreed to address the Texas SCV's application for a specialty plate and allow the full Board to decide.

4.36 The Texas SCV received notice on March 18, 2011 that their sample plate had been approved related to

visibility and other technical requirements. Public comment was invited, and the plate was placed on the agenda for the April 14, 2011 Board meeting.

4.37 The design of plate that was approved is attached herein as Exhibit A.

4.38 Prior to that meeting, the official on-line public comments resulted in approximately 300 votes for the plate and only 6 against the plate. Thus, the official public comments were heavily in favor of the Texas SCV's application for a specialty plate.

4.39 At the April 14, 2011 meeting, the Board, missing one member, voted twice, with both votes resulting in a deadlock of 4-4.

4.40 The Board decided to move the vote of the Texas SCV plate to another meeting to address the deadlock.

4.41 The Texas SCV plate, sponsored by Commissioner Patterson, was not placed on the Board meeting agenda until November 10, 2011.[5]

4.42 Also on the Board meeting agenda, and also sponsored by Commissioner Patterson, was a license plate to honor the Buffalo Soldiers, post-Civil War black soldiers who fought in the Indian wars of the Southwest, and benefitting the Buffalo Soldiers National Museum in Houston.

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[5] One of the Board members who had voted for the Texas SCV plate passed away following the April 14, 2011 meeting. Governor Perry appointed a new member to the Board. This contributed to the delay of the vote for the Texas SCV plate.

4.43 Following commentary by both proponents and opponents, the Board rejected the SCV plate at the hearing by a 8-0 vote without any discussion.

4.44 At the same hearing, the Buffalo Soldiers plate, without any discussion, was approved by a 5-3 vote.

4.45 During the November 10, 2011 hearing, Chairman Vandergriff announced at the open hearing that the Board was denying the Texas SCV plate, and he referenced Section 504.801(c) of the Transportation Code, in which the "department may refuse to create a new specialty license plate if the design might be offensive to any member of the public."

4.46 On December 1, 2011, Randy Elliston, the Director of the Vehicle Titles and Registration Division of the Texas Department of Motor Vehicles, sent a letter to Plaintiff Ray W. James explaining that the "Texas Department of Motor Vehicles agency review and Board action regarding the application for creation of a Sons of Confederate Veterans specialty license plate [had] been completed" and that the Board, "after hearing public testimony, voted to deny the Son's of Confederate Veterans' application for a new specialty plate."

4.47 At some point in time, Chairman Vandergriff signed a Resolution Denying the Sons of Confederate Veterans Specialty Plate Application citing Transportation Code §504.801(c) and Title 43, Texas Administrative Code §217.28(c)(3). The Resolution states that the Board "finds it necessary to deny this plate design application ... because public comments have shown that many members of the general public find the design offensive, and because such comments are reasonable." Further,

the Resolution states that "[t]he Board finds that a significant portion of the public associate the confederate flag with organizations advocating expressions of hate directed toward people or groups that is demeaning to those people or groups." The Resolution also stated that the plate might pose a public safety issue due to the controversy.

4.48 The Texas SCV alone was denied its specialty license plate because of the seal of their organization contains a Confederate flag. This seal represents their viewpoint the viewpoint venerating the Confederate soldier and his cause, the preservation of liberty and freedom.

V. Cause of Action

5.1 Plaintiffs hereby reaffirm and re-allege each and every allegation made in contained in paragraphs 4.1-4.48 above.

5.2 Through the members of the Department of Motor Vehicles Board, the State of Texas has discriminated against the Texas SCV based on the ideas and message that the Texas SCV supports, in clear violation of the First Amendment.

5.3 The Board members seek to bar the Texas SCV from expressing their viewpoint while allowing all other groups to express their viewpoint: this type of restriction is exactly the type which the First Amendment is designed to erase.

5.4 The only guideline that the Transportation Code has to offer, which the Board referenced as its reason for rejecting the plate, is that the Board can reject a plate "if

the design might be offensive to any member of the public..."

5.5 This, however, cannot be the standard. It is vague and indeterminable. Essentially, it is no standard at all to say that the Board can discriminate based upon a viewpoint if such speech is offensive to anyone. The First Amendment clearly protects controversial speech.

5.6 Additionally, even if simply being "offensive to any member of the public" was sufficient to allow for rejection, the State has approved numerous plates that are "offensive to any member of the public" - such as the "Texas State Rifle Association" plate. In fact, the plate approved the very same day as the Texas SCV plate was rejected the Buffalo Soldier plate is offensive to Native Americans because the all-black cavalry helped fight Native Americans in the Indian Wars from 1867-1888.[6]

5.7 Similarly, the Board members denying the Texas SCV seal because it is "derogatory" is a violation of the First Amendment. The definition in Tex. Admin. Code §217.28(c)(3) is vague and is not objective: it puts the meaning of "derogatory" in the eye of the beholder. The Board members have determined the seal is derogatory, even though Plaintiffs, who are not an organization of hatred, believe the flag symbolizes the Confederate soldier and his cause.

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[6] *See* Gary Scharrer, *Indian group objects to Buffalo Soldier plates*, HOUSTON CHRONICLE, available at http://www.chron.com/news/houston-texas/article/Indian-group-takes-issue-with-Buffalo-Soldier-22931-28. php.

5.8 The Board members have also stated in the Resolution that public safety might be an issue, but there is no support for that statement. Further, the same concern could be raised of many of the other plates already issued, including those for colleges and professional sports teams.

5.9 In order to protect their rights, Plaintiffs file this suit against Defendants for preliminary and mandatory permanent injunctive relief pursuant to 42 U.S.C. §1983.

5.10 All conditions precedent to the bringing of this action have either occurred or been performed by Plaintiffs or waived by Defendant.

5.11 The Texas SCV is entitled to a preliminary injunction and, following trial, a mandatory permanent injunction against the Defendants to compel them to grant the Texas SCV's application for a specialty plate and to implement such a plate.

5.12 Plaintiffs can demonstrate that they have suffered an irreparable injury. The Fifth Circuit has stated that [l]oss of First Amendment freedoms, even for minimal periods of time, constitute irreparable injury." *Ingebretsen v. Jackson Pub. Sch. Dist.*, 88 F.3d 274, 280 (5th Cir.1994). Further, Plaintiffs had applied to receive their plate in time for the sesquicentennial of the Civil War, which began in April 2011, which offered a boost in sales of the plate. Plaintiffs are being denied their plate during an important time for their organization.

5.13 Plaintiffs have no adequate remedy at law. The Defendants are denying the Plaintiffs plate based upon the very seal of the organization. Plaintiffs have no other

means to have their plate implemented by the state with their seal other than to enjoin the Defendants to do so.

5.14 Plaintiffs have a likelihood of success on the merits. There is ample caselaw that specialty plates are private speech and thus viewpoint discrimination, such as what occurred here, is not permitted under the First Amendment.

5.15 The balance of hardships favor the Plaintiffs. Plaintiffs are deeply affected by the denial of their specialty plate, both by the infringement on their right to speak through these plates and by the loss of revenue for activities that they support. Particularly in light of the many, many specialty plates already in existence and regularly approved by the Defendants, the Defendants will suffer no injury.

5.16 Injunctive relief would not adversely affect public policy or public interest. Indeed, the promotion of First Amendment rights, such as free speech, is important public policy and of significant public interest.

5.17 The Texas SCV has retained the undersigned counsel to prosecute this action and has agreed to pay counsel a reasonable attorney's fee for the efforts herein. Defendants are liable for this fee as well as their costs under Section 1988 of Title 42 of the United States Code.

WHERFORE Plaintiffs Texas Division, Sons of Confederate Veterans, Inc., request this Court:

- grant the Plaintiffs' requested injunctive relief, enjoining the Defendants to approve the Texas SCV's application for a specialty plate and implementing such a plate;

- grant to Plaintiffs their resonable and necessary attorneys' fees and costs;
- and for such further relief to which Plaintiffs are entitled.

Respectfully submitted,

GEORGE & BROTHERS, L.L.P.
By: /s/
R. James George, Jr.
Texas State Bar No. 07810000
1100 Norwood Tcrwer
114 W. 7th Street
Austin, Texas 78701
Telephone: (512) 495-1400
Facsimile: (512) 499-0094
rjgeorge@georgecandbrothers.com

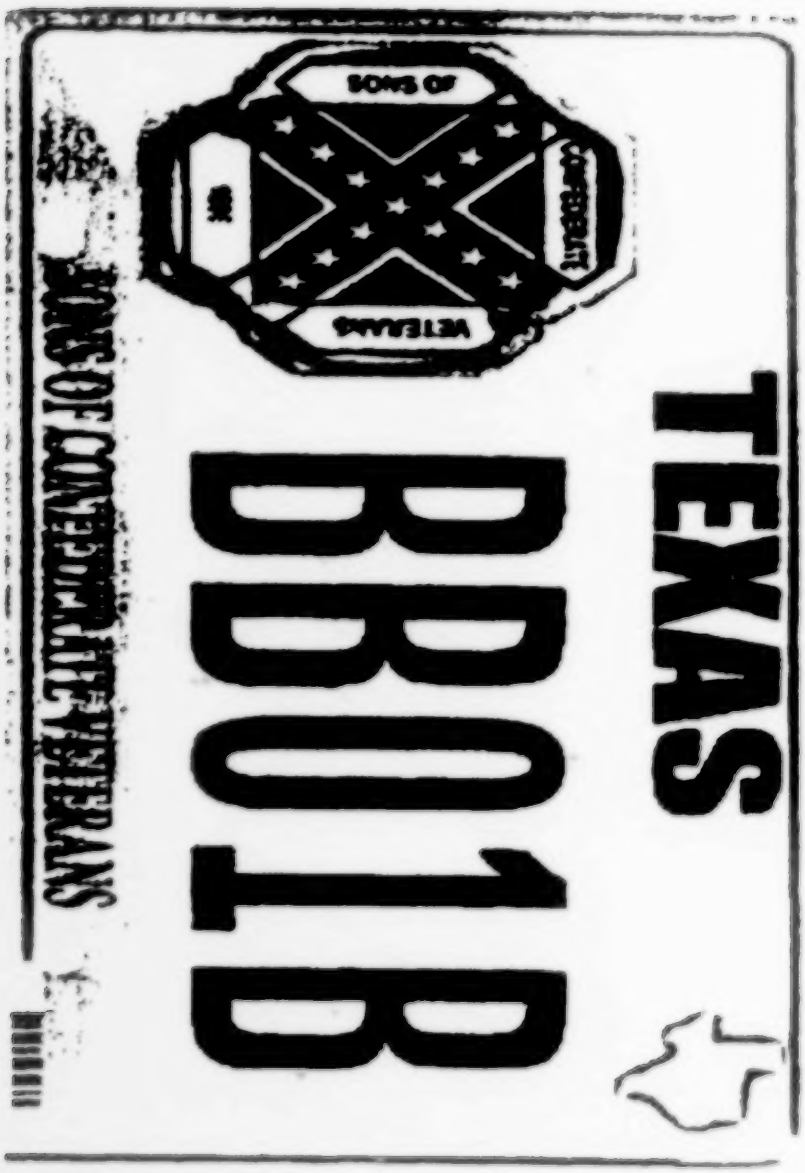
ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on the 17th of January 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF electronic filing system, which will send notification of such filing to the following:

Erika M. Kane
James "Beau" Eccles
Assistant Attorneys General
Office of the Attorney General
General Litigation Division
P. O. Box 12548, Capitol Station
Austin, Texas 78711-2548

/s/
R. James George, Jr.


TEXAS
BB01B
SONS OF CONFEDERATE VETERANS

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS AUSTIN DIVISION

TEXAS DIVISION, SONS OF CONFEDERATE VETERANS, INC., a Texas Corporation, GRANVEL J. BLOCK, individually, and RAY W. JAMES, individually *Plaintiffs*,	§	
v.	§	
VICTOR T. VANDERGRIFF, in his official capacity as Chairman of the Motor Vehicle Board, CLIFFORD BUTLER, in his official capacity as a Member of the Board, RAYMOND PALACIOS, JR., in his official capacity as a Member of the Board, BLAKE INGRAM, in his official capacity as a Member of the Board, CHERYL JOHNSON, in her official capacity as a Member of the Board, LAURA RYAN, in her official capacity as a Member of the Board, VICTOR T. RODRIGUES, in his official capacity as a Member of the Board,	§	CIVIL CASE NO. 1:11-cv-01049-SS

MARVIN RUSH, in his official capacity as a Member of the Board, and JOHN WALKER, III, in his official capacity as a Member of the Board,	§ § § § § § § §
Defendants.	§

DEFENDANTS' ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT

TO THE HONORABLE JUDGE SAM SPARKS:

Defendants, Victor T. Vandergriff, in his official capacity as Chairman of the Texas Department of Motor Vehicles (DMV) Board ("the Board"), Clifford Butler, in his official capacity as a member of the Board, Raymond Palacios, Jr., in his official capacity as a member of the Board, Blake Ingram, in his official capacity as a member of the Board, Cheryl Johnson, in her official capacity as a member of the Board, Laura Ryan, in his official capacity as a member of the Board, Victor Rodriguez, in his official capacity as a member of the Board, Marvin Rush, in his official capacity as a member of the Board, and John Walker III, in his official capacity as a member of the Board (collectively, "Defendants") file this Answer in response to Plaintiffs' First Amended Complaint, and respectfully show the Court the following:

Pursuant to FED. R. CIV P. 8(b), Defendants deny each and every allegation contained in Plaintiffs' First Amended Complaint except for those expressly admitted herein. The numbered paragraphs and titles below

correspond to the numbered paragraphs and titles within Plaintiffs' Complaint:

I. Nature of the Action

1.1 This paragraph contains assertions of law to which no response is required.

1.2 Defendants are without sufficient information to admit or deny Plaintiffs' allegations, and therefore deny same.

1.3 Admit that Defendants are members of the DMV Board and that the DMV Board denied a plate design application filed by the Texas Sons of Confederate Veterans (SCV); deny remainder of paragraph.

1.4 This paragraph contains a restatement of Plaintiffs' claim for relief to which no response is required.

II. Parties

2.1 Defendants are without sufficient information to admit or deny Plaintiffs' allegations, and therefore deny same.

2.2 Admit.

2.3 Admit.

2.4 Admit.

2.5 Admit.

2.6 Admit.

2.7 Admit.

2.8 Admit.

2.9 Admit.

2.10 Admit.

2.11. Admit.

III. Venue and Jurisdiction

3.1. Admit.

3.2 Defendants admit that as a general matter the Court has federal question jurisdiction over Plaintiffs' claims, but deny that any violation of law has occurred.

3.3. Admit.

IV. Facts

A. General Background of the Organization and its Seal

4.1 Defendants are without sufficient information to admit or deny Plaintiffs' allegations, and therefore deny same.

4.2 Defendants are without sufficient information to admit or deny Plaintiffs' allegations, and therefore deny same.

4.3 Defendants are without sufficient information to admit or deny Plaintiffs' allegations, and therefore deny same.

4.4 Defendants are without sufficient information to admit or deny Plaintiffs' allegations, and therefore deny same.

4.5 Defendants are without sufficient information to admit or deny Plaintiffs' allegations, and therefore deny same.

4.6 Defendants are without sufficient information to admit or deny Plaintiffs' allegations, and therefore deny same.

4.7 Defendants are without sufficient information to admit or deny Plaintiffs' allegations, and therefore deny same.

4.8 Defendants are without sufficient information to admit or deny Plaintiffs' allegations, and therefore deny same.

4.9 Defendants are without sufficient information to admit or deny Plaintiffs' allegations, and therefore deny same.

4.10 Defendants are without sufficient information to admit or deny Plaintiffs' allegations, and therefore deny same.

4.11 Defendants are without sufficient information to admit or deny Plaintiffs' allegations, and therefore deny same.

4.12 Defendants are without sufficient information to admit or deny Plaintiffs' allegations, and therefore deny same.

B. Specialty License Plates for Organization

4.13 Admit.

4.14. Admit first sentence. Deny second sentence.

4.15 Admit.

4.16 Admit.

4.17 Defendants are without sufficient information to admit or deny Plaintiffs' allegation and therefore deny same.

4.18 Defendants are without sufficient information to admit or deny Plaintiffs' allegation and therefore deny same.

4.19 Defendants are without sufficient information to admit or deny Plaintiffs' allegation and therefore deny same.

C. Texas SCV Submits its initial Application for License

4.20 Defendants are without sufficient information to admit or deny Plaintiffs' allegation and therefore deny same.

4.21 Defendants are without sufficient information to admit or deny Plaintiffs' allegation and therefore deny same.

4.22 Defendants are without sufficient information to admit or deny Plaintiffs' allegation and therefore deny same.

4.23 Defendants are without sufficient information to admit or deny Plaintiffs' allegation and therefore deny same.

4.24 Defendants are without sufficient information to admit or deny Plaintiffs' allegation and therefore deny same.

4.25 Defendants are without sufficient information to admit or deny Plaintiffs' allegation and therefore deny same.

4.26 Defendants are without sufficient information to admit or deny Plaintiffs' allegation and therefore deny same.

4.27 Defendants are without sufficient information to admit or deny Plaintiffs' allegation and therefore deny same.

4.28 Defendants are without sufficient information to admit or deny Plaintiffs' allegation and therefore deny same.

4.29 Admit Defendant Vandergriff received an e-mail from Ms. Davio; deny remainder of paragraph.

4.30 Admit.

4.31 Admit Legislature established the DMV; deny remainder of paragraph.

4.32 Admit that the language cited is language in the statute.

4.33 Deny.

4.34 Admit.

4.35 Admit that DMV Board considered SCV's plate design application at a meeting subsequent to October 2010.

4.36 Admit SCV's plate design was an April 14, 2011 agenda item and that as a general matter public comment is permitted on specialty plate designs pursuant to 43 Tex. Admin. Code § 217.28(i)(6). Deny remainder of paragraph.

4.37. Deny.

4.38 Deny.

4.39 Admit.

4.40 Admit.

4.41 Admit.

4.42 Admit that the Buffalo Soldiers license plate design was a November 10, 2011 agenda item.

4.43 Admit.

4.45 Deny.

4.46 Admit.

4.47 Admit the Board issued a resolution signed by Chairman Vandergriff; the language of the resolution speaks for itself.

4.48 Deny.

V. Cause of Action

5.1 No response is required to this paragraph.

5.2 Deny.

5.3 Deny.

5.4 Deny.

5.5 Deny.

5.6 Deny.

5.7 Deny.

5.8 Deny.

5.9 Deny that Plaintiffs are entitled to the requested relief.

5.10 This paragraph contains legal argument to which no response is required.

5.11 Deny.

5.12 Deny.

5.13. Deny.

5.14 Deny.

5.15 Deny.

5.16 Deny.

5.17 Admit that Plaintiffs have retained counsel, but deny that Defendants are liable for fees and costs.

Defendants deny that Plaintiffs are entitled to any of the relief requested in their prayer for relief.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

DAVID C. MATTAX
Deputy Attorney General for
Defense Litigation

ROBERT B. O'KEEFE
Chief, General Litigation Division

/s/ Erika M. Kane
Erika M. Kane
Texas Bar No. 24050850
Assistant Attorney General
General Litigation Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Phone (512) 463-2120
Fax (512) 320-0667
COUNSEL FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document has been sent via the Court's electronic notification system on March 21, 2012, to:

R. James George, Jr.
George & Brothers, LLP
114 West 7th Street
Suite 1100
Austin, TX 78701
(512) 495-1400 (phone)
(512) 499-0094 (fax)

/s/ Erika M. Kane
Erika M. Kane
Assistant Attorney General

IN THE UNITED SATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TEXAS DIVISION, SONS OF CONFEDERATE VETERANS, INC., a Texas corporation, GRANVEL J. BLOCK, Individually, and RAY W. JAMES, individually	§	
Plaintiffs,	§	
v.	§	CIVIL CASE
TEXAS DEPARTMENT OF MOTOR VEHICLE BOARD, VICTOR T. VANDERGRIFF, in his official capacity as Chairman of the Board, CLIFFORD BUTLER, in his official capacity as a Member of the Board, RAYMOND PALACIOS, JR., in his official capacity as a Member of the Board, BLAKE INGRAM, in his official capacity as a Member of the Board, CHERYL JOHNSON, in her official capacity as a Member of the Board, LAURA RYAN, in her official capacity as a Member of the Board, VICTOR RODRIGUEZ, in his official capacity as a Member of the	§	NO. 1: 11-cv-01049

Board, MARVIN RUSH,	§
in his official capacity as a	§
Member of the Board, and	§
JOHN WALKER III, in his	§
Official capacity as a Member	§
of the Board	§
	§
Defendants.	§

AFFIDAVIT OF RAY W. JAMES

STATE OF TEXAS	§
	§
COUNTY OF /s/ Brazos	§

BEFORE ME, the undersigned Notary Public, on this day personally appeared Ray James, whose identity is known to me. After being by me duly sworn, on his oath, he said:

1. My name is Ray W. James. I am over the age of eighteen (18), of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated, which are all true and correct.

2. I am the Past Commander of the Texas Division of Sons of Confederate Veterans ("Texas SCV"). I was the Commander at the time of Texas SCV's application for a specialty license plate.

EXHIBIT
1

3. Currently, the SCV has specialty automobile license plates available to drivers in Georgia, North Carolina, Alabama, Maryland, Mississippi, Louisiana, South Carolina, Tennessee, and Virginia. Each of these plates features the SCV logo. Photographs of these plates are attached as **Exhibit A**.

4. Texas SCV initially applied for a specialty license plate in Texas with the Department of Transportation (TxDOT), the proper agency at the time, in August 2009. The plate was sponsored by Texas Land Commissioner Jerry Patterson. A true and correct copy of the application is attached as **Exhibit B**.

5. The proposed specialty license plate included the logo or seal of the Sons of the Confederate Veterans, which contains the Battle Flag of the Confederate States of America encircled by four tabs containing the words "Sons of Confederate Veterans 1896."

6. The logo of the SCV contains the Battle Flag of the Confederate States of America, originally from the Battle Flag of the Army of Northern Virginia, designed under General P.G.T. Beauregard in order to avoid confusion on the battlefield due to the striking similarities between the First National flag of the Confederacy and the flag of the Union.

7. The flag is square and covered by a blue saltire with thirteen white five-pointed stars to represent the states of the Confederacy. Although the battle flag design was adopted as the canton in both the Second National and Third National flags of the Confederacy, the battle flag was not the national Confederate flag; it was the battle flag under which Confederate soldiers,

including Texas soldiers, fought in multiple battles. This battle flag was initially adopted by the SCV's predecessor, the United Confederate Veterans, as their symbol. Thus it best represents the soldiers who fought under it and has been referred to as the "soldier's flag".

8. As reflected in early issues of the SCV periodical *The Confederate Veteran* (a true and correct copy of which is attached as **Exhibit C**), the seal of the national organization, containing the square soldier's flag, has been in use by the organization since at least 1924. There is no other official logo, seal, or emblem that represents the SCV. To be sure, some divisions have at times embellished the logo with additional graphic elements such as sabers or a wreath, but the essential SCV logo has remained the same since at least 1924, with the square Battle Flag and the four tabs containing the words "Sons of Confederate Veterans 1896."

9. In 2003, the logo was registered with United States Patent and Trademark Office as a service mark for the Sons of Confederate Veterans. The SCV sought to trademark this seal in order to assure that the seal would only be used with SCV approval.

10. Particularly at the time we initially applied, we were interested in having a specialty plate in advance of the Civil War Sesquiscentennial, April 12, 2011. Having a plate before that event would allow for Texas SCV to acquire additional funds prior the Sesquicentennial, providing for the organization to have the monetary means for additional events. Further, having a specialty plate at the time of the Sesquicentennial would have allowed for additional plate sales with members and non-

members interested in commemorating the historic events. Texas SCV's annual budget is only about $10,000, and we estimated the sale of the specialty plates would have tripled our budget.

11. In its application, we noted that we intended to use the funds from the plate to "[s]upport the General Land Office's preservation of historical documents important to Texas; support the Texas Historical Commission's placement of monuments to Texas units across the South; and generally assist in carrying out our mission."

12. On October 1, 2009, the Texas SCV (through the undersigned) received an email from the Texas Department of Transportation acknowledging receipt of Texas SCV's application for the specialty plate. The email noted that the application was reviewed and deemed complete. The email also stated:

> The review process is automated. The application and all pertinent information is scanned and placed on a secured TxDOT Intranet site for the SPLAC members to review and anonymously vote on the application. Rebecca Davio, Vehicle Titles and Registration Division Director, sends an E-mail to all SLPAC members advising the application is ready for their review and vote. She usually allows 5 business days for the SLPAC members to review and vote.
>
> I intermittently check the site to review the voting. Once a simple majority quorum vote is complete, you will be advised if the SLPAC

> tentatively approved or denied the specialty license plate application.

A true and correct copy of this email is attached as **Exhibit D.** (Attorney-client privileged notations have been redacted.)

13. More than two months later, in a letter dated December 21, 2009, Rebecca Davio, Director of the Vehicle Titles and Registration Division, informed us that our application for a specialty license plate was denied. A true and correct copy of this letter is attached as **Exhibit E.**

14. Following this denial, the Texas SCV made an open records request to the Department of Transportation. **Exhibit F** contains true and correct excerpts from the response to the open records request,

15. In October 2010, after learning that the TxDOT Board had initially approved the plate, we appealed to the Texas DMV, the agency that acquired the responsibility for approving specialty license plates. A true and correct copy of the appeal to the Texas DMV is attached as **Exhibit G.**

16. We received notice on March 18, 2011 that our sample plate had been approved related to visibility and other technical requirements. The design of plate that was approved is attached herein as **Exhibit H.**

17. Public comment was invited, and the plate was placed on the agenda for the April 14, 2011 Board meeting. At the April 14, 2011 meeting, which I attended, the Board voted twice, with both votes resulting in a deadlock of 4-4 (one member of the 9-person board was

absent). The Board decided to move the vote of the Texas SCV plate to another meeting to address the deadlock.

18. Our plate was not placed on the Board meeting agenda again until November 10, 2011.

19. Also on the November 10, 2011 Board meeting agenda, and also sponsored by Commissioner Patterson, was a license plate to honor the Buffalo Soldiers, post-Civil War black soldiers who fought in the Indian wars of the Southwest, and benefitting the Buffalo Soldiers National Museum in Houston.

20. Following commentary by both proponents and opponents, the Board rejected the Texas SCV plate at the November 10, 2011 hearing by a unanimous vote.

21. At the same hearing, the Buffalo Soldiers plate was approved by a 5-3 vote.

22. The Texas Department of Motor Vehicles Board members who voted on the decision to reject our plate were: Victor T. Vandergriff, the executive director, and members Clifford Butler, Raymond Palacios, Jr., Blake Ingram, Laura Ryan, Victor Rodriguez, Marvin Rush, and John Walker III.

23. During the November 10, 2011 hearing, Chairman Vandergriff announced that the Board was denying the Texas SCV plate, and he referenced Section 504.801(c) of the Transportation Code, in which the "department may refuse to create a new specialty license plate if the design might be offensive to any member of the public." (77:5-7.) True and correct copies of excerpts from the transcript of the Nov. 10, 2011 hearing are

attached as **Exhibit I.** (The full transcript is available online at http://www.txdmv.gov/About_Us/board_meetings/2011/transcripts/nov10.pdf. Last visited October 3, 2012.)

24. The Texas Department of Motor Vehicles Board set forth the reasons for its Nov. 10, 2011, rejection of the proposed Sons of Confederate Veterans plate design in a Resolution signed by the Board Chair, a true and correct copy of which is attached as **Exhibit J.**

25. I have reviewed the website myplates.com which sells specialized plates for Texas. There are a variety of these specialty plates currently available to Texas drivers, and including a wide variety of charitable and non-profit organizations, including "Ducks Unlimited", "Fight Terrorism", "Knights of Columbus", "Boy Scouts of America" and "Choose Life." Other specialty plates available in Texas include plates referencing or depicting Mighty Fine Burgers, Knights of Columbus (which reads "One Nation Under God"), the Dallas Cowboys, Calvary Hill and three crosses (which reads "One State Under God"), Remax Realty, and Keller High School Indians, to name a few. Examples of some of the plates available are attached as **Exhibit K.** Many of these plates bear the seal of an organization and a motto or the organization name. Current examples of specialty plates can be found on the DMV website at http://www.txdmv.gov/vehicles/ licenseplates/catalogplates.htm.

26. TxDOT offers for sale a "Flags of Texas" print that includes the flag of the Confederate States. It is available online at https://www.texashighways.com/txhwy/giftshoplindex.php?SCREEN=department&departme

nt=14&startpos=5 (last visited October 29, 2012). Attached as **Exhibit L** is a copy of the print.

27. The Texas SCV is a non-profit organization that works diligently to preserve the memory and reputation of the Confederate soldiers, emphasizing the virtues of their fight for the preservation of liberty and freedom. The organization, through its local camps, provides a service to communities through preservation of monuments, flags, and other historical materials, as well as through educational activities and other civic activities.

28. Texas SCV and the national Sons of Confederate Veterans condemn the misuse of the Confederate Battle Flag image by groups that espouse political extremism and/or racial superiority/divisiveness. These groups do not have any ownership over the right to use the Confederate Battle Flag. The Sons of Confederate Veterans, descendants of those soldiers who fought under the Confederate Battle Flag, are the flag's true inheritors.

FURTHER AFFIANT SAYETH NOT

/s/ Ray W. James
RAY W. JAMES

SUBSCRIBED AND SWORN TO BEFORE ME on /s/ 30th of October, 2012.

/s/ Kay S. Choate
NOTARY PUBLIC,
State of Texas

KAY S. CHOATE
MY COMMISSION EXPIRES
February 8, 2014

My commission expires: /s/ 2/8/14

(1/22/2010) Mike Craig – Re: SLPAC Votes – Sons of Confederate Veterans Page 1

REDACTED

From: Scott Renouard
To: Mike Craig; Rebecca Davio; Tammy Belk
CC: Christina Flores; David Chambers; Jennifer Soldano; Monica Hernandez
Date: 11/3/2009 8:52 AM
Subject: Re: SLPAC Votes – Sons of Confederate Veterans

Rebecca,

I would recommend you send an email encouraging all to vote (we did this once before)! Since it is now documented that we had a quorum and that the plate passed by a simple majority, I don't think we can just declare a no pass. An open records request would expose the vote and we will be shown as biased. I believe we should follow the procedures and let the public decide! Might even generate a lot hits to website! Thanks!
Scott

Scott Renouard
Director of Support Services
Vehicle Titles and Registration Division
Texas Department of Motor Vehicles
PO Box 26417
Austin, TX 78755-0417
512/302-2224
FAX: 512/302-2092
krenoua@dot.state.tx.us

==========

>>> Rebecca Davio 11/2/2009 6:11 PM>>>
Might thought is this plate did not pass the vote, so no further action is required except to notify the organization that they can try the legislative route.

>>>Tammy Belk 11/2/2009 4:27 PM>>>
As of 4:25 p.m. today nothing has changed regarding the votes for the Sons of Confederate Veterans.

Only 5 of 7 members have voted on this license plate; looks like we need all 7 to vote on this one.

Rebecca, what is the next step?

Thanks much!

Tammy Belk
Specialty License Plate Coordinator
Special Services Branch, VTR
TX Department of Motor Vehicles (TxDMV)
4000 Jackson Avenue
Austin, Texas 78731
512/302-2375
FAX 512/302-2040
tbelk@dot.state.tx.us

>>>

From: Tammy Belk
To: Mike Craig; Rebecca Davio
CC: Christina Flores; David Chambers; Monica Hernandez; Scott Renouard
Date: 10/30/2009 11:54 AM
Subject: SLPAC Votes - Sons of Confederate Veterans

As of 11:55 a.m. today:

Sons of Confederate Veterans
5 votes total
3 yes
2 no

I will continue to check on the Sons of Confederate Veterans. Thanks.

From: Tammy Belk
To: David Chambers; Jennifer Soldano; Mike Craig; Rebecca Davio; Scott R...
CC: Candace Southerland; Christina Flores
Date: 12/9/2009 3:40 PM
Subject: Sons of Confederate Veterans Vote

As of 3:35 p.m. today, Wednesday, December 9, 2009, vote is as follows:

1 - yes
3 - no

Thanks much!

Tammy Belk
Specialty License Plate Coordinator
Special Services Branch, VTR
TX Department of Motor Vehicles (TxDMV)
4000 Jackson Avenue
Austin, Texas 78731
512/302-2375
FAX 512/302-2040
tbelk@dmv.state.tx.us

>>>

From: Rebecca Davio
To: Tammy Belk, David Chambers, Jennifer Soldano, Scott Renouard, Mike Craig
CC: Christina Flores, Candace Southerland
Date: 12/7/2009 3:50 PM
Subject: Re: Sons of Confederate Veterans Vote

We need to send another reminder/plea.

This message is sent from a mobile device. Please excuse typos. Thanks–Rebecca

----Original Message----

From: Tammy Belk

Cc: Christina Flores <CFLORE2@dmv.state.tx.us>

Cc: Candace Southerland <CSOUTH1@dmv.state.tx.us>

To: David Chambers <DCHAMBE@dmv.state.tx.us>

To: Jennifer Soldano <JSOLDANO@dmv.state.tx.us>

To: Scott Renouard <KRENOUA@dmv.state.tx.us>

To: Mike Craig <MCRAIG1@dmv.state.tx.us>

To: Rebecca Davio <RDAVIO@dmv.state.tx.us>

Sent: 12/7/2009 1:46:34 PM
Subject: Sons of Confederate Veterans Vote

As of 1:42 p.m. today, Monday, December 7, 2009, only three members have voted.

1 vote yes
2 votes no

Rebecca sent E-mail requesting to re-vote on Thursday, December 3, 2009, at 11:45 a.m.

First vote was on 12/03/09, at 12:15 p.m.
Second vote on 12/02/09, at 1:07 p.m.
Third vote on 12/03/09, at 1:14 p.m.

No more votes since Thursday afternoon, December 3, 2009.

Thanks much!

Tammy Belk
Specialty License Plate Coordinator
Special Services Branch, VTR
TX Department of Motor Vehicles (TxDMV)
4000 Jackson Avenue
Austin, Texas 78731
512/302-2375
FAX 512/302-2040
tbelk@dmv.state.tx.us

TEXAS DEPARTMENT OF MOTOR VEHICLES
BOARD MEETING

9:00 a.m.
Thursday,
November 10, 2011

Room 120
John H. Reagan Building
105 West 15th Street
Austin, Texas 78701

BOARD MEMBERS:

Victor Vandergriff, Chair
Cheryl E. Johnson, Vice Chair
Cliff Butler
Blake Ingram
Raymond Palacios
Victor Rodriguez
Marvin Rush
Laura Ryan
Johnny Walker

STAFF MEMBERS:

Linda M. Flores, Interim Executive Director
Brett Bray, General Counsel

EXHIBIT
I

[76] MR. VANDERGRIFF: Thank you.
That concludes the public comments, and thank you very much for your time on that. I do want to note for the benefit of the audience, and certainly my fellow board members are aware of this, that typically when plates come before us, when we were created, the decision was made by the legislature to have this board hear plates versus being decided, in essence in secret, for or against by the staff of the Texas Department of Transportation. And in fact, there is a history with this plate at that department that it might have actually been approved by the department versus coming before this board.
One of the great things about this board, that's been noted by several of the speakers, is that it is available to the public and to the industries so that all matters are aired in public. And I think that's one of the great things that we've seen today is that this has not been something decided in secret, it's been decided in open with comments both for and against this -- or will be decided.
I want to note that typically when we get plates before us, because the decision also was made by

the legislature that we wanted to encourage private plates so that we could generate additional revenue for the state. We have had a proliferation of those plates, if [77] you will, over the last two years to accomplish that very task. Most of the time we base our decisions on rules that primarily deal with reflectivity and readability.

We do, however, always look at Transportation Code Section 504.801(c) which is that the department may refuse plates if the design is offensive to any member of the public, the nominating state agency does not consent to the receipt of funds derived from the issuance of the license plate, the uses identified from those funds might violate a statute or constitutional provision, or for any other reason established by rule which, again, most of our rules today deal with reflectivity, readability and proliferation of the plate. So I wanted to note that for the record that these are the things the board will consider, I'm sure, as it makes a decision.

With that, I'm happy to open this up to my board members.

MR. RODRIGUEZ: I move we not approve items 5.A.1 and 2, Mr. Chairman.

MR. VANDERGRIFF: Do we have a second

for that
motion?
MR. PALACIOS: Second.
MR. VANDERGRIFF: We have a motion from Board
Member Rodriguez, a second from Board Member Palacios. Do
we have any discussion?
[78] MR. INGRAM: Is the motion to deny number 1 and
2?
MR. VANDERGRIFF: No. The motion is to deny
just the –
MR. INGRAM: His motion was 1 and 2.
MR. VANDERGRIFF: 1 and 2?
MR. RODRIGUEZ: 1 and 2, yes, sir.
MR. VANDERGRIFF: Your motion was to deny 1 and
2?
MR. RODRIGUEZ: Yes, sir. We're considering
both at this time. Right? Are we not considering both?
MR. VANDERGRIFF: The way we brought it up, it
was just the Sons of Confederate Veterans.
MR. RODRIGUEZ: All right. Let me modify my
motion then. I move that we not approve item 5.A.1.
MR. VANDERGRIFF: Do we have a second for that?
MR. PALACIOS: Second.

MR. VANDERGRIFF: We have a motion and a second. Do we have any discussion by the board?

(No response.)

MR. VANDERGRIFF: Seeing none, I will call for your vote. A yes vote is a motion to deny. All those in favor of denying the plate, please raise your right hand.

(A show of hands.)

MR. VANDERGRIFF: All those opposed?

[79] (No response.)

MR. VANDERGRIFF: The motion carries unanimously, the plate is denied.

(Applause and cheering from audience.)

MR. VANDERGRIFF: We do have other business to attend to. Given the fact that the room is a little crowded, we're going to stand in recess for 15 minutes.

MR. VANDERGRIFF: The Board of the Texas Department of Motor Vehicles, we are back in session.

We're going to take up where we left off which, again, was out of the order of the posted agenda, but that is on 5.A.2 which is the Buffalo Soldiers plate. I'm not sure if Commissioner Patterson is still here in the room to speak for this plate. I think he had given his thoughts previously on it, so I will acknowledge that he

is the head of the sponsoring state agency.
We do have three speakers here in favor of this plate that I do want to recognize. The first is founder of the Buffalo Soldiers National Museum, Paul Matthews.
CAPT. MATTHEWS: Good morning. This is a marvelous day that the Lord sent, show a little enthusiasm. Good morning.
AUDIENCE: Good morning.
CAPT. MATTHEWS: That's more like it. My name is Captain Matthews. I'm the founder and the curator of

[194] CERTIFICATE

MEETING OF: Texas Department of Motor Vehicles Board
LOCATION: Austin, Texas
DATE: November 10, 2011

I do hereby certify that the foregoing pages, numbers 1 through 194, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy H. King before the Department of Motor Vehicles.

11/20/2011
(Transcriber) (Date)

On the Record Reporting
3307 Northland, Suite 315
Austin, Texas 78731

BOARD OF THE TEXAS DEPARTMENT OF MOTOR VEHICLES

RESOLUTION DENYING SONS OF THE CONFEDERATE VETERANS SPECIALTY LICENSE PLATE APPLICATION

Transportation Code, Chapter 504, Subchapter I provides for the development of new specialty license plates through the department.

The Texas Department of Motor Vehicles Board is responsible for approving or declining all specialty license plate applications under Transportation Code §504.801 and in accordance with Title 43, Texas Administrative Code, §217.28, Specialty License Plates, Symbols, Tabs, and Other Devices.

The Board finds that the Sons of the Confederate Veterans specialty plate design was posted on the Internet for public comment, and notice of consideration of the plate design was posted in accordance with Office of the Secretary of State meeting notice requirements in accordance with §217.28(i)(6).

Order Number:_____

Date Passed:
/s/ November 10, 2011

EXHIBIT
J

The Board decision is based on: compliance with Transportation Code, §504.801; whether the design meets legibility and reflectivity standards; whether the design meets the standards for uniqueness; whether the license plate design can accommodate the International Symbol of Access (ISA); whether the objectionable or misleading criteria designated in §217.22(c)(3)(B) applies to the design; whether a design is similar enough to an existing plate design that it may compete with the existing plate sales; other information provided during the application process, including public comment on proposed design; and information provided in open meeting.

Transportation Code, §504.801(c) authorizes the Board to refuse to create a new specialty license plate if the design might be offensive to any member of the public or for any other reason established by rule. The provision of Title 43, Texas Administrative Code, §217.28(c)(3) lists factors under which a license plate may be considered objectionable or misleading. The objectionable factors include, but are not limited to whether the plate is found to be derogatory. "Derogatory" is defined as an expression of hate directed toward people or groups that is demeaning to people or groups, or associated with an organization that advocates such expressions.

The Board has considered the information and finds it necessary to deny this plate design application, specifically the confederate flag portion of the design, because public comments have shown that many members of the general public find the design offensive, and because such comments are reasonable. The Board

finds that a significant portion of the public associate the confederate flag with organizations advocating expressions of hate directed toward people or groups that is demeaning to those people or groups.

The Board also finds there is a compelling public interest in protecting a conspicuous mechanism for identification, such as a license plate, from degrading into a possible public safety issue. The department shares a common public mission with several state agencies to protect public safety. The extent of the controversy surrounding this plate may challenge public safety since the design could distract or disturb some drivers to the point of being unreasonably dangerous.

IT IS THEREFORE ORDERED by the Board that the Sons of the Confederate Veterans specialty plate design is disapproved.

The department is directed to take the necessary steps to implement the actions.

/s/
Victor Vandergriff, Chairman
Board of Texas Department of Motor Vehicles

Examples of Specialty License Plates Available in Texas

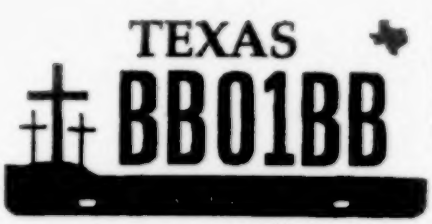
[Fold-Out 1 to be inserted here]

Examples of Specialty License Plates Available in Texas

Statutory Plate

Statutory Plate

Non-profit Application-Based Plate



Non-profit Application-Based Plate

Commercial Application-Based Plate

Commercial Application-Based Plate

EXHIBIT
K

Examples of Specialty License Plates Available in Texas

[Fold-Out 1 to be inserted here]

TEXAS
BB01B
God Bless Texas

TEXAS
BB01B
TEXAS MASONS

TEXAS
BB01B

TEXAS
BB01B
SCOUTING TEACHES VALUES

TEXAS
BB01B
SERVICE ABOVE SELF

TEXAS
BB01B
Choose Life

AFA
TEXAS
BB01B
AIR FORCE ASSOCIATION

UF
TEXAS
BB01BB
The Gator Nation

TEXAS
BB01B
God Bless America

TEXAS
BB01B
TEXAS 4-H
To Make the Best Better

Texas DMV Brochure:
"Proposing a Specialty License Plate"

[Fold-Out 2 to be inserted here]

There are now 3 ways to get your specialty license plate on the road.

1 Submit your proposal to myplates.com

posing a design to My Plates, the department's cial vendor for new specialty license plates, is an easy / for anyone to propose a new license plate. My Plates he vendor contracted by the Texas Department of Motor icles (TxDMV) to create, market, and sell new license te designs, and may be the first stop for any group, for- fit or non-profit, to request a plate. License plates sold ough My Plates can benefit your organization by sending it ortion of the plate's proceeds. This process requires you ubmit a $4,615 deposit to My Plates, which is refunded if are a non-profit organization, after 500 of your plates are l or renewed.

Who's eligible?

Any individual, non-profit organization, or for-profit entity can propose a new specialty license plate to My Plates.

Who gets the revenue?

Plate sales benefit the State, My Plates, and your organization. Your proceeds from your plate's sales can go virtually anywhere--even directly to your organization. The proceeds your organization receives from the sale of specialty plates submitted through My Plates are set by your contractual agreement with My Plates, not by law.

Do I need to find a state sponsor?

No. With My Plates you do not have to find a sponsor.

How long does the process take?

From the time the proposal is made, the approval process typically takes about six months before the plate is available to order.

What are the plate design requirements?

License plates proposed through My Plates must meet legibility, reflectivity, and design standards. However, license plates created using this method allows you a larger variety of design options, like having your plate created in full color.

For more information about how to propose a license plate design to My Plates, visit www.myplates.com.

2 Submit your proposal to the Texas Department of Motor Vehicles

The Texas Department of Motor Vehicles (TxDMV) can administratively approve new license plate designs that benefit state agencies or charities. Your qualifying non-profit organization must complete the department's application and, if it is approved, submit an $8,000 deposit, which will be refunded when 800 sets of your organization's license plates are sold or renewed. A representative from your organization must complete TxDMV's license plate sponsorship application, which includes information about your organization and proof that your organization qualifies as a non-profit organization with the Internal Revenue Service.

Who's eligible?

Only non-profit organizations may apply to create a license plate through TxDMV. Nominating organizations must reach an agreement with a qualifying state organization or TxDMV.

Who gets the revenue?

If your license plate is approved, your state agency sponsor will receive $22 of the $30 fee collected for every set of specialty plates sold.

Your organization can work with its state agency sponsor to determine where proceeds can be sent.

Do I need to find a state sponsor?

Yes. If your organization does not find a state agency willing to sponsor your license plate and accept the proceeds from its sale, the proceeds are distributed to the highway fund.

How long does the process take?

From the time the proposal is made, the approval process typically takes about six months before the plate is available to order.

What are the plate design requirements?

License plates proposed through TxDMV must meet legibility, reflectivity, and design standards. An online design template is available at the TxDMV website to assist you.

For more information about TxDMV's license plate approval process, visit www.TxDMV.gov.

3 Ask Your State Legislator

The Texas Legislature also has the ability to create new license plates and is the sole option for plates offered at reduced or no fee to qualified applicants (e.g. military). Because of the volume of legislative requests for new specialty license plates previously filed during each legislative session, the legislature specifically granted TxDMV and My Plates the ability to create new plates without legislative intervention. Except for plates honoring our military, a legislatively created license plate requires the sponsor to submit an $8,000 deposit to the TxDMV which is refunded after 800 plates are sold or renewed.

Who's eligible?

Anyone can approach their legislator and ask for a new license plate design. However, new license plates created through this process tend to be for the benefit of state agencies, or to recognize service, such as military.

Who gets the revenue?

The fee amount and distribution of revenue is set by the legislature.

Do I need to find a state sponsor?

Maybe. License plates created by the legislature typically benefit state agencies.

How long does the process take?

The time it takes to have a license plate legislatively approved varies. It takes approximately six months after the bill becomes law before the plate is available to order.

What are the plate design requirements?

License plates created by the Texas Legislature must meet legibility, reflectivity, and design standards.

To contact your legislator, find out who represents you by visiting www.fyi.legis.state.tx.us.

67.b

Texas DMV Brochure:
"Proposing a Specialty License Plate"

[Fold-Out 2 to be inserted here]

Frequently Asked Questions

Q. My organization isn't a certified non-profit agency. Are we still eligible to sponsor a license plate?
A. Yes. Anyone—including individuals, non-profit organizations, and for-profit entities—can propose a design to My Plates, the state's official vendor for specialty license plates.

Q. Why do we have to submit a deposit?
A. The $8,000 deposit for plates created through the TxDMV process covers the state's costs for programming, and producing your organization's license plate. Your deposit will be refunded when 800 sets of your organization's specialty license plates are sold or renewed. License plates created through My Plates require a $4,615 deposit, which is refunded to non-profit organizations after 500 of your specialty license plates are sold or renewed.

Q. If my organization doesn't sell 800 or more license plates after going through the TxDMV approval process, where does our deposit go?
A. Your deposit remains in the State Highway Fund until sales of your license plate meet the statutory threshold of 800 renewals or new applications.

Q. Can my organization's specialty plate be available only to individuals that meet certain criteria?
A. Yes. For example, the department currently offers a license plate for which only licensed Realtors® are entitled. However, remember that adding qualifications will restrict the number of potential purchasers, and could result in keeping your organization from meeting its refund threshold.

Q. Does my organization have to reapply if our proposal is not approved, or will it be reconsidered?
A. Your organization must reapply.

Q. Who provides the plate design?
A. You do, though your design is subject to reflectivity, legibility, and design standards. Depending on which approval route you choose, My Plates or TxDMV will work with your organization to help you understand those standards.

Q. How much money does a sponsoring state agency receive from the sale of a plate sold through TxDMV?
A. Of the $30 fee collected for each specialty plate approved through the TxDMV and sold in the state of Texas, $22 goes to the sponsoring state agency.

Q. Is it possible to request that funds received from license plate sales benefit the applying non-profit organization?
A. Yes, this is possible if your proposal goes through My Plates. This is also possible for plates approved administratively or legislatively.

Q. Is the TxDMV, or My Plates, under an obligation to produce my specialty license plate design?
A. No. New plates are either approved by the TxDMV Board or by the Texas Legislature.

The Texas Department of Motor Vehicles offers a number of license plates specifically for military veterans, military medal honorees, and their families. Because these qualifying license plates are issued under a military-specific fee structure, new military-related license plates must be proposed and approved through the legislative process.
Persons wishing to create a license plate honoring members of the military should use this table as a guide when proposing the plate's fee structure.

Congressional Medal of Honor	Free	Free*	Free
Legion of Valor Air Force Cross Distinguished Service Cross Navy Cross	Free	Free*	Free
Distinguished Flying Cross	Free	Free*	Free
Distinguished Service Medal	Free	Free*	Free
Silver Star	Free	Free*	Free
Bronze Star, Bronze Star w/ Valor	Free	Free*	Free
Legion of Merit	Free	Free*	Free
Disabled Veteran	3.00	Free*	6.00
Former POW (Prisoner of War)	3.00	Free*	6.00
Pearl Harbor Survivor	3.00	Free*	6.00
Purple Heart	3.00	Free*	6.00
World War II, Korea, Vietnam, Operations Iraqi Freedom, Enduring Freedom, and Desert Storm**	Free*	Free*	6.00
Active or Honorably Discharged US Air Force US Army US Coast Guard US Marine Corps US Navy	Free*	Free*	6.00
Coast Guard Auxiliary	Free*	Free*	6.00
Armed Forces Reserve	Free*	Free*	6.00
Military Academy Graduates US Air Force Academy US Military Academy West Point US Naval Academy	Free*	Free*	6.00
US Paralympian	Free*	Free*	6.00
Woman Veteran	Free*	Free*	6.00
Marine Corps League	Free*	Free*	6.00
Texas Guard (National or State)	Free*	Free*	6.00
Texas Wing Civil Air Patrol	Free*	Free*	6.00
Gold Star Family	10.00*	N/A	6.00
Gold Star Father	10.00*	N/A	6.00
Gold Star Mother	10.00*	N/A	6.00
Gold Star Spouse	10.00*	N/A	6.00

* requires payment of regular registration fees.
** Desert Storm also qualifies for this plate

www.TxDMV.gov
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Texas Department *of* Motor Vehicles
HELPING TEXANS GO. HELPING TEXAS GROW.

Proposing a Specialty License Plate